



**Billing Code 6325-39**

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR 870**

**RIN 3206-AN52**

**Federal Employees' Group Life Insurance Program: Clarifying Annual Rates of Pay and Amending the Employment Status of Judges of the United States Court of Appeals for Veterans Claims**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to amend Federal Employees' Group Life Insurance Program (FEGLI) regulations to clarify the definition of annual rates of pay for insured employees and to address the status of judges of the United States Court of Appeals for Veterans Claims.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ronald Brown, Policy Analyst, (202) 606-0004, or by e-mail to [Ronald.Brown@opm.gov](mailto:Ronald.Brown@opm.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FEGLI Program is administered by the Office of Personnel Management (OPM) in accordance with Chapter 87 of Title 5 of the U.S. Code and our implementing regulations (title 5, part 87, and title 48, part 21, of the Code of Federal Regulations). The FEGLI enabling legislation was signed August 17, 1954. Also, Congress enacted Public Law 84-356, on August 11, 1955, to provide continuation of life insurance during retirement.

The FEGLI Program covers approximately 4,261,000 employees and annuitants enrolled in Basic insurance, including approximately 1,229,000 employees and annuitants with Option B insurance that has not reduced to zero, approximately 1,160,000 employees and annuitants enrolled in Option A insurance, and approximately 924,000 employees and annuitants enrolled in Option C insurance that has not reduced to zero.

The FEGLI statute establishes the basic rules for benefits, enrollment, and participation, and provides that OPM “shall specify the types of pay included in annual pay.” See 5 U.S.C. 8704(c). In accordance, OPM has promulgated regulations defining the “basic insurance amount” for all FEGLI Program enrollees. Further, the “basic insurance amount” is defined by law using the term “annual rate of basic pay.” See 5 U.S.C. 8701(c). For FEGLI Program purposes, the basic insurance amount applies to Basic and Option B insurance.

This final regulation clarifies what is considered annual basic pay for FEGLI Program purposes but does not change how the annual rate of basic pay is computed, provide additional enrollment or change opportunities, or make other changes not in the existing FEGLI Program regulations. The final rule makes this clear in the revised sections of part 870 by aligning the FEGLI Program and retirement regulations, and, in the process, eliminating certain outdated regulatory provisions on annual rates of basic pay. This final regulation also includes a change enacted under Public Law 114-315 requiring that retired and current judges for the United States Court of Appeals for Veterans Claims be considered employees for purposes of FEGLI.

## **Discussion of Changes**

On June 29, 2018, OPM published a proposed regulation (83 FR 30589) to clarify that annual basic pay for FEGLI includes any type of pay treated as basic pay for purposes of the

retirement systems established under 5 U.S.C. chapters 83 and 84 consistent with applicable law or OPM regulation and to address the status of judges for the United States Court of Appeals for Veteran's Claims. OPM received no comments on the proposed rule. Accordingly, this final regulation adopts the proposed regulation with the changes pertaining to life insurance for Federal judges of the United States Court of Appeals for Veterans Claims referenced below.

The final regulation changes existing paragraphs 5 CFR 870.204(a)(1) and (a)(2) to clarify that basic pay for FEGLI purposes includes all payments that are retirement-creditable basic pay under 5 U.S.C. chapters 83 and 84. The final rule also deletes regulatory provisions that listed specific types of pay that are either obsolete or creditable as retirement basic pay. This includes revised paragraphs on locality pay and special pay supplements. These changes do not substantively affect pay that is creditable towards life insurance payment, but merely incorporate provisions that were previously contained in guidance into regulation through a reference to retirement law. This regulation codifies OPM's unwritten policy to consider pay that is creditable towards retirement as creditable towards life insurance payment.

The final regulation makes the required update at 5 CFR 870.101 to state that the United States Court of Appeals for Veterans Claims is now the employing office for judges of the United States Court of Appeals for Veterans Claims. This replaces the prior employing office, the United States Court of Veterans Appeals.

Also, the final regulation clarifies existing paragraph 5 CFR 870.703(e)(1) concerning certain Federal judges by adding the words "a judge who retires under parts (i-vii)" and striking "one of the following." It also adds 5 CFR 870.703(e)(1)(vii) concerning retired Federal judges to reflect the statutory change under Public Law 114-315. The change reflects that 38 U.S.C. 7296 is amended by section 202 of Public Law 114-315 to state that a judge of the United States

Court of Appeals for Veterans Claims who is retired is considered an employee under the FEGLI Program.

### **Expected Impact of the Final Rule**

This rule clarifies the definition of annual rates of basic pay for the FEGLI Program and does not make substantive changes to its computation. It only affects the life insurance of a small number of federal employees and annuitants that are or have served as judges for the United States Court of Appeals for Veteran's Claims. The Court is authorized seven permanent active judges, and two additional judges, appointed for 15-year terms as part of a temporary expansion provision.

### **Regulatory Procedures**

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and was not reviewed by OMB.

### **Reducing Regulation and Controlling Regulatory Costs**

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 2, 2017) because this final rule is not significant under Executive Order 12866..

### **Regulatory Flexibility Act**

The Office of Personnel Management certifies that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects a small number of Federal employees and annuitants.

## **Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

## **Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)**

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3507(d); see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM has determined this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 outside of an already approved existing collection under OMB Control No: 3206-0230, Life Insurance Election.

## **List of Subjects in 5 CFR Part 870**

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life Insurance, Retirement

Office of Personnel Management.

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**Alexys Stanley,**  
Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 870 as follows:

**PART 870—FEDERAL EMPLOYEES’ GROUP LIFE INSURANCE PROGRAM**

1. The authority citation for part 870 continues to read:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251, and section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106-522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110-279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110-177, 121 Stat. Stat Printed Page 773662542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104-106, 110 Stat. 521.

2. Amend § 870.101 by revising paragraph (4) in the definition of *Employing Office*, to read as follows:

**§ 870.101 Definitions.**

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*Employing Office* \*\*\*

(4) The United States Court of Appeals for Veterans Claims is the employing office for judges of the United States Court of Appeals for Veterans Claims.

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3. Amend § 870.204 by revising paragraph (a) to read as follows:

**§ 870.204 Annual rates of pay.**

(a)(1) An employee's annual pay is the annual basic pay of the position as fixed by law or regulation, except as otherwise provided by specific provision of law or OPM regulation. Annual pay for this purpose includes the following:

(i) Any pay of a type that is treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84, consistent with 5 U.S.C. 8331(3), and pay that is annual pay for purposes of the FEGLI Program as provided in Federal law and regulation;

(ii) Any geographic-based pay supplement that is equivalent to a locality-based comparability payment under 5 U.S.C. 5304; and

(iii) Any special pay supplement for a defined subcategory of employees that is equivalent to a special rate supplement under 5 U.S.C. 5305.

(2) Notwithstanding paragraph (a) (1) of this section, annual basic pay does not include the following:

(i) Bonuses, allowances, overtime pay, military pay, or any other pay to a covered civilian employee given in addition to the base pay of the position, except as otherwise provided by specific provision of law or OPM regulation.

(ii) Physicians comparability allowances under 5 U.S.C. 5948.

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4. Amend § 870.703 by revising paragraph (e)(1) introductory text and adding paragraph (e)(1)(vii) to read as follows:

**§ 870.703 Election of Basic insurance.**

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(e)(1) For purposes of this part, a judge who retires under paragraphs (e)(1)(i) through (vii) of this section is considered to be an employee after retirement:

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(vii) 38 U.S.C. 7296;

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